EFFECTIVE DATE: 0901 u.t.c., July 25, 1991.

FOR FURTHER INFORMATION CONTACT: James G. Walters, telephone (404) 763–7646.

Issued in East Point, Georgia, on March 28, 1991.

Walter E. Denley,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 91–8537 Filed 4–11–91; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 90–ASO–26]

Revision of Control Zone and Transition Area, Beaufort, SC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correction to final rule; Change of effective date.

SUMMARY: The effective date of the final rule as published in the **Federal Register** on March 12, 1991, Volume 56, page 10364, has been changed from August 22, 1991, to July 25, 1991. This correction is necessary to coincide with the established cycle for aeronautical charts and to meet the charting deadline for the next edition of the Charlotte Sectional Aeronautical Chart. This correction will avoid an additional six month delay in charting airspace changes. In consideration of the foregoing, I find that it is in the public interest to effect this correction without further public notice and comment.

EFFECTIVE DATE: 0901 u.t.c., July 25, 1991.

FOR FURTHER INFORMATION CONTACT: James G. Walters, telephone (404) 763–7646.

Issued in East Point, Georgia, on March 28, 1991.

Walter E. Denley,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 91–8536 Filed 4–11–91; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 284

[Docket No. RM87–34–065 et al.; Order No. 500–k]

Natural Gas Pipelines After Partial Wellhead Decontrol, et al.

Issued April 4, 1991.

AGENCY: Federal Energy Regulatory Commission, Energy.

ACTION: Order on remand on "Double Crediting" issue, requiring tariff filings, and dismissing proceedings; final rule removing crediting regulations.

SUMMARY: In *American Gas Association* v. *FERC*, 912 F.2d 1496 (DC Cir. 1990), the court generally affirmed Order Nos. 500–H and 500–I, the Commission's final rule with respect to open access transportation under part 284 of the Commission's Regulations. This order responds to the court's limited remand of the issue of "double credits." The Commission finds that the take-or-pay crediting regulations included in part 284 (§§ 284.8(f) and 284.9(f)) did not result in improper double crediting in the situation about which the producers were concerned.

Since the Commission's take-or-pay crediting regulations terminated on December 31, 1990, this order also removes the crediting regulations from part 284. In addition, this order requires that, on or before October 15, 1991, pipelines must modify their tariffs to remove all tariff language related to the implementation of crediting. Pipelines may do this either as part of another rate filing or in a separate filing. Finally, this order dismisses various complaints and petitions for declaratory order or rulemaking, requesting either: (1) That the Commission exercise its authority under section 5 of the Natural Gas Act to modify take-or-pay contracts with producers or (2) that the Commission interpret its crediting regulations.

EFFECTIVE DATE: April 4, 1991.

FOR FURTHER INFORMATION CONTACT: Richard Howe, Jr., (202) 208–1274, Federal Energy Regulatory Commission, Office of the General Counsel, 825 North Capitol Street, NE., Washington, DC 20426.

SUPPLEMENTARY INFORMATION:

Before Commissioners: Martin L. Allday, Chairman; Charles A. Trabandt, Elizabeth Anne Moler, Jerry J. Langdon and Branko Terzic.

In the matter of

Natural Gas Pipelines After Partial Wellhead Decontrol, Docket No. RM87–34–065; Take-or-Pay Provisions in Producer/Pipeline Contracts, Docket No. RM83–55–000; Pipeline Gas Cut-Back Procedures, Docket No. RP83–124–000; Texas Gas Transmission Corp. v. Amoco Production Co., Docket No. GP86–38–000; Transcontinental Gas Pipe Line Corp. v. Challenger Minerals, Inc., Docket No. GP88–7–000; State of Connecticut v. ANR Pipeline Co., Docket No. GP88–10–000; and Total Minatome Corp., Docket No. GP88–29–000.

ORDER ON REMAND ON "DOUBLE CREDITING" ISSUE, REQUIRING TARIFF FILINGS, AND DISMISSING PROCEEDINGS; FINAL RULE REMOVING CREDITING REGULATIONS

Issued April 4, 1991.

I. Introduction

On August 24, 1990, the United States Court of Appeals for the District of Columbia Circuit affirmed in most part Order Nos. 500–H and 500–I,[1] the commission's final rule with respect to open access transportation under part 284 of the Commission's regulations.[2] This order deals with the court's limited remand of the issue of "double credits." In addition, since the Commission's take-or-pay crediting regulations terminated on December 31, 1990, this order removes the regulations providing for credits, §§ 284.8(f) and 284.9(f) of the Commission's regulations. This order also requires that, on or before October 15, 1991, pipelines must modify their tariffs to remove all tariff language related to the implementation of crediting. Pipelines may do this either as part of another rate filing or in a separate filing. Finally, this order dismisses various complaints and petitions for declaratory order or rulemaking, requesting either: (1) That the Commission exercise its authority under section 5 of the Natural Gas Act to modify take-or-pay contracts with producers or (2) that the Commission interpret its crediting regulations.

II. Background

In Order Nos. 500–H and 500–I, the Commission continued in effect the Order No. 500 crediting regulations (with one modification concerning casinghead and other must-take gas) until the earlier of December 31, 1990, or the date on which a pipeline accepts a GIC certificate.[3] Those crediting regulations

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[1] Regulation of Natural Gas Pipelines after Partial Wellhead Decontrol, Order No. 500-H, 54 FR 52,344 (Dec. 21, 1989), FERC Stats. & Regs. 30,867 (1989), *reh'g granted in part and denied in part*, Order No. 500–I, 55 FR. 6605 (Feb. 26, 1990), FERC Stats. & Regs. 30,880 (1990).

[2] *American Gas Association* v. *FERC*, 912 F.2d 1496 (DC Cir. 1990) (*AGA II*).

[3] The provision that crediting terminates on the earlier of December 31, 1990 or the date on which a pipeline accepts a GIC certificate appears at 18 CFR 284.8(f)(1) and 284.9(f)(1) (1990). In Order No. 500–H, the Commission stated that if the DC Circuit Court of Appeals had not completed judicial review of the final rule by December 31, 1990, the Commission would further extend the December 31, 1990 deadline until 30 days after the date of issuance of the court's mandate upon completion of judicial review. The Court's mandate issued on November 13, 1990, and accordingly the crediting program terminated on December 31, 1990.

permitted an open access pipeline to refuse to transport a producer's gas unless that producer offered to credit the volumes to be transported against the pipeline's existing take-or-pay liability under any pre-June 23, 1987 contract with the producer. The purpose of the crediting requirement was to help offset the potential, discussed in *Associated Gas Distributors* v. *FERC*, 824 F.2d 981 (DC Cir. 1987), for open access transportation to aggravate pipelines' take-or-pay problems. As the Commission explained in Order Nos. 500–H and 500–I, crediting did this primarily by giving pipelines additional bargaining power to negotiate with producers reasonable settlements of their take-or-pay contracts.

In Order Nos. 500–H and 500–I, the Commission also determined not to take action under NGA section 5 to modify producer-pipeline take-or-pay contracts. The Commission stated that, since it lacks authority to modify contracts for the sale of non-jurisdictional gas, section 5 action would not bring about, and could discourage, the complete restructuring of all pipeline-producer contracts necessary to resolve fully the pipeline's take-or-pay problems and complete the transition to a competitive wellhead market. The Commission therefore found that, assuming pipelines have the bargaining power to negotiate reasonable settlements that resolve their take-or-pay problems, settlements are a preferable solution to the take-or-pay problem. The Commission concluded that, since pipelines had already substantially resolved the bulk of their take-or-pay problems through individually negotiated settlements and since the provisions of the final rule, including the continuation of crediting, should enable pipelines to negotiate reasonable settlements of the remainder of their take-or-pay problems, the Commission would not take section 5 action.

In AGA II, the court affirmed in all but one respect the Commission's decisions concerning crediting, and the Commission's related rejection of requests that it take action under NGA Section 5 to modify take-or-pay contracts between producers and pipelines. The court upheld the Commission's reliance on individual settlement negotiations, under incentives structured by the crediting program, as the best way to resolve the pipelines' take-or-pay problems. In affirming the Commission's refusal to take section 5 action, the court held, "We have no basis whatever for forcing the Commission into interference with thousands of contracts, in the form either of generic rules or interminable case-by-case decisions, which in either event would be only dimly related to the price difficulty that is the core of the pipelines' problem and is plainly off the Commission's reservation." [4]

However, the court remanded the case to the Commission for further consideration of the so-called "double crediting" issue. Under the crediting mechanism, a pipeline could require a producer to offer credits for transporting gas which another pipeline had purchased from that producer. Some producers contended before the court that this amounted to providing "double credits," since the purchasing pipeline's purchase of the unit of gas would prevent it from incurring any take-or-pay liability for that gas, while the transporting pipeline's application of the credit would also reduce that pipeline's take-or-pay liability. The producers accordingly contended that the Commission had erred in permitting the transporting pipeline to seek a credit in the above-described situation. The court held that the Commission had not adequately addressed this contention and remanded the case to the Commission to address the producers' concerns head-on.

III. Discussion

A. "Double Crediting" Issue

After further consideration, the Commission continues to believe that its crediting regulations did not result in improper double crediting in the situation described by the producers. The producers postulate a situation in which a particular producer has take-or-pay contracts with two pipelines entered into before June 23, 1987. The first pipeline purchases gas under its take-or-pay contract, paying the producer the price provided in the contract. That purchase constitutes a take under the contract, and thus the purchasing pipeline does not incur take-or-pay liability for that gas. This allegedly constitutes the first credit. The purchasing pipeline (or some other shipper) then seeks to have the gas transported on the second pipeline. The second pipeline refuses to transport the gas, unless the producer provides the transporting pipeline a credit against its take-or-pay liability under its contract with the producer. The producer offers the credit. This allegedly constitutes the second credit. The producers contended that this alleged double crediting requirement unduly burdened them and should be eliminated by providing that the transporting pipeline would not be eligible for a credit in the above-described situation.

The primary difficulty with the producers' contention is that it requires treating the purchasing pipeline's actual purchase of a unit of gas under its take-or-pay contract as the giving of a credit. This, however, only make sense if the purchasing pipeline's purchase can be considered a detriment to the producer that is in addition to the detriment of the actual credit given to the transporting pipeline. It is difficult to see how the purchasing pipeline's purchase pursuant to the terms of its contract can be considered a detriment to the producer, since that purchase is precisely what the producer bargained for when it entered into the take-or-pay contract with the purchasing pipeline. The whole purpose of the take-or-pay clause was to ensure the producer a minimum level of income by requiring the pipeline either to purchase and pay for the gas or, if it did not purchase the gas, at least pay for it. That purpose has been accomplished by the purchasing pipeline's actual purchase of the gas, as required by the contract.

The producers apparently consider the purchase under the take-or-pay contract to be a detriment to the producer on the ground that the producer would have been better off to have the purchasing pipeline not actually take the gas, but instead incur an obligation to make the take-or-pay payment. In that event, the producer would have been owed the same payment from the pipeline, only in the form of a take-or-pay payment for gas not taken instead of in the form of a payment for gas taken. However, in addition, the producer would have retained the gas and could have resold it to another purchaser (or to the pipeline in a later year). However, the Commission does not believe that loss of the ability to receive both a take-or-pay payment for a unit of gas and income from selling the same unit of gas to another purchaser constitutes a detriment to the producer to justify creating an additional exception from the Commission's crediting requirement. Even assuming that the producer would have been better off if the purchasing pipeline had not purchased the gas, it nevertheless got what it bargained for under the contract—payment for the gas taken.[5]

[4] 912 F.2d at 1509.

[5] No producer ever filed a specific request for relief with the Commission, alleging that it in fact had been required to give "double credits" in the manner described above. Accordingly, it appears that the asserted "double crediting" problem may have been more theoretical than real.

In any event, if the producer truly preferred to obtain a take-or-pay payment from the purchasing pipeline instead of actually making a sale to that pipeline, it probably could have accomplished that by simply refusing to offer the transporting pipeline a credit. Nothing in the Commission's regulations required producers to offer credits. The offer of credits was purely voluntary. If the transporting pipeline refused to transport the gas as a result of the producer's failure to offer credits, the purchasing pipeline would have had to decide whether it really wanted to purchase the gas from the producer if it could not obtain the necessary transportation to make its intended resale of the gas.[6] If the purchasing pipeline chose not to purchase the gas after all, the pipeline would nevertheless owe the producer a take-or-pay payment in the same amount as the purchase price and the producer would be free to resell the gas to another purchaser. On the other hand, if the purchasing pipeline nevertheless proceeded to purchase the gas from the producer, the producer would not have to provide any credit to the transporting pipeline. In either event, the producer would not have had to provide so-called double credits, even under the producers' definition of that term. Thus, the producers had it entirely within their power to prevent the alleged double crediting situation from arising.

In Order No. 500–H the Commission observed, in support of allowing a pipeline to receive a credit for transporting gas that another pipeline had purchased under a take-or-pay contract, that the purchasing pipeline's sale to customers in the transporting pipeline's sales market could displace the transporting pipeline's own sales. The court expressed doubt that this observation supported the requirement that the producer offer the transporting pipeline a credit.[7] While the court agreed that the transporting pipeline might have a sale displaced, it noted that a particular unit of gas can be used only once and that one use would seem to state the aggregate amount of displacement. Regardless of the extent of sales displacement, the Commission believes that the producers' double crediting contention must fail simply because, as discussed above, they are not required to provide double credits in the situation which they describe.

In any event, as the court proceeded to state, "[t]he true displacement caused by sale of a fungible commodity is necessarily obscure (if not in fact an arbitrary concept)."[8] It is for that reason that the Commission never required a pipeline, as a condition for obtaining a credit, to show that its transportation of gas on behalf of another would actually displace its own sale. The Commission assumed that in some cases a pipeline would obtain credits for transporting gas which did not displace its sale; however, this would be offset in other cases where, because of an exception to crediting, the pipeline was required to transport gas without a credit, even though that gas nevertheless did displace the pipeline's sale.

As noted above, the purpose of crediting was to help offset the potential for open access transportation to aggravate pipelines' take-or-pay problems. One result of crediting was to give pipelines increased bargaining power to negotiate reasonable settlements of their take-or-pay problems with producers, without allowing pipelines unlimited use of their monopoly power over transportation by refusing to transport gas for which the producer had offered a take-or-pay credit. The Commission believes that the crediting regulations as adopted in Order Nos. 500–H and 500–I, including the requirement for credits in the situation here at issue, struck a reasonable balance between, on the one hand, the pipelines' need for sufficient bargaining power to negotiate reasonable settlements and, on the other hand, the need to prevent pipelines from abusing their monopoly power over transportation.

Finally, the court in AGA II expressed concern that allowing a transporting pipeline to obtain a credit for transporting gas which another pipeline had purchased might "provide rich opportunities for mutual back-scratching among pipelines—to arrange for transporting each other's gas for the purpose of generating credits." The court suggested that this could be a particular problem "because the producer has no say over which pipelines will transport the gas." The Commission does not believe that, as a practical matter, this proved to be a problem under the crediting program. At no time during the crediting program did the Commission receive any complaints from producers that pipelines were in fact arranging to transport one another's gas for the purpose of obtaining credits.

Furthermore, the producers did have control over purchasing pipelines' ability to transport the producers' gas on other pipelines. As discussed above, producers were free to refuse to offer a particular pipeline a credit. In that case, the transporting pipeline could either refuse to transport the gas or transport it without credits, but it could in no event obtain a credit from the producer. Thus, the producers had it entirely within their power to prevent a purchasing pipeline for having the gas transported over a second pipeline for a credit.

B. Deletion of Crediting Regulations

Pursuant to §§ 284.8(f)(1) and 284.9(f)(1) of the Commission's regulations, the crediting program terminated on December 31, 1990. As the Commission stated in Order No. 500–I,[9] this means not only that pipelines cannot seek credits for transportation performed after December 31, 1990, but also that they may not after December 31, 1990 apply against any take-or-pay liability previously unused credits generated by transportation performed before December 31, 1990. Since the Commission's crediting regulations, by their own terms, are no longer in effect, the Commission is, in this order, deleting those regulations (§§ 284.8(f) and 284.9(f) of Part 284) in their entirety.

C. Removal of Tariff Language Related to Crediting

A number of interstate pipelines have tariff provisions that provide for the implementation of the Commission's crediting rules. These tariff provisions not only require that offers of credits be provided to the pipeline, they also, in some cases, require that shippers provide pipelines the necessary information for the pipeline to determine its crediting rights. For example, the shipper may be required to inform the pipeline of the name of each producer that, on June 23, 1987, owned the leases from which the gas to be transported was produced. Since the crediting program terminated on December 31, 1990, all tariff provisions whose sole purpose is the implementation of the crediting program are now unnecessary. Accordingly, the Commission is requiring that all pipelines with such tariff provisions file, on or before October 15, 1991. To modify their tariffs

[6] This assumes that the purchasing pipeline would not actually purchase the gas from the producer until it has determined that it could obtain the necessary transportation to make its intended resale. If instead the pipeline went ahead and purchased the gas before determining if it could obtain the necessary transportation, then the producer could retain the sale while avoiding any subsequent credit simply by refusing to offer credits to the transporting pipeline.

[7] 912 F.2d at 1513.

[8] *Id.*

[9] III FERC ¶ 30,880 at 31,710.

so as to remove any tariff language whose sole purpose is the implementation of the crediting program. The pipelines may do this either as part of another rate filing or in a separate filing.

D. Dismissal of Proceedings Concerning Section 5 Action or the Commission's Crediting Regulations

Pipelines and others have filed various complaints and petitions for declaratory orders seeking to have the Commission exercise NGA section 5 authority to modify particular pipeline-producer contracts. As discussed above, the court in AGA II has affirmed the Commission's decision in Order Nos. 500–H and 500–I not to initiate action under NGA section 5 to modify producer-pipeline contracts, either in a generic rule or on a case-by-case basis. The court upheld the Commission's decision instead to rely on individually-negotiated settlements to resolve the take-or-pay problem. Accordingly, the Commission is, in this order, dismissing the various complaints and petitions for declaratory orders or rulemakings seeking section 5 action that are pending before it.

In addition, various requests for the Commission to interpret its crediting regulations were filed with the Commission before the issuance of Order Nos. 500–H and 500–I. The Commission believes that those requests were largely answered by Order Nos. 500–H and 500–I. Accordingly, this order also dismisses all pending requests for interpretation of the crediting regulations, without prejudice to any party refiling a request for interpretation to the extent that it continues to believe such an interpretation is necessary.

IV. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. The Commission certifies that promulgating this rule does not represent a major Federal action having a significant economic impact on a substantial number of small entities. Therefore, no regulatory flexibility analysis is required.

V. Information Collection

The Office of Management and Budget's (OMB) regulations require that OMB approve certain information collection requirements imposed by agency rule. The Commission is notifying OMB of the information collection and recordkeeping requirements deleted by this rule as a result of the elimination of the Commission's crediting regulations.

VI. National Environmental Policy Act Statement

The Commission concludes that promulgating this rule does not represent a major Federal action having a significant adverse effect on the human environment under the Commission's regulations implementing the National Environmental Policy Act. Consequently, neither an environmental impact statement nor an environmental assessment are required.

VII. Effective Date

The amendment of the Commission's part 284 regulations to eliminate the crediting provisions does not alter the substantive rights or interests of any interested persons, since those provisions have already terminated by their own terms. Therefore, prior notice and comment under section 4 of the Administrative Procedure Act (APA) are unnecessary. Since the purpose of this final rule is to delete certain provisions of the Commission's regulations that are no longer pertinent, the Commission finds good cause to make this rule effective immediately upon issuance. This rule is therefore effective April 4, 1991.

List of Subjects in 18 CFR Part 284

Continental shelf, Natural Gas, Reporting and recordkeeping requirements.

The Commission Orders

(A) All interstate pipelines must, within six months of the publication of this order in the **Federal Register**, file to modify their tariffs so as to remove any tariff language whose sole purpose is the implementation of the crediting program. The pipelines may do this either as part of another rate filing or in a separate rate filing.

(B) The above-captioned proceedings concerning complaints or petitions for declaratory orders or rulemaking seeking section 5 action to modify producer-pipeline take-or-pay contracts or interpretations of the Commission's crediting regulations are dismissed.

(C) The Commission amends part 284, title 18, Code of Federal Regulations, as set forth below.

Commissioner Trabandt dissented in part with a separate statement to be issued later.

By the Commission.

Lois D. Cashell,

Secretary.

PART 284—CERTAIN SALES AND TRANSPORTATION OF NATURAL GAS UNDER THE NATURAL GAS POLICY ACT OF 1978 AND RELATED AUTHORITIES

1. The authority citation for part 284 is revised to read as follows:

Authority: 15 U.S.C. 717–717w; 15 U.S.C. 3301–3432; 43 U.S.C. 1331–1356; 42 U.S.C. 7101–7532; E.O. 12009, 3 CFR 1978 Comp., p. 142.

§§ 284.8 and 284.9 [Amended]

2. Sections 284.8(f) and 284.9(f) are removed.

[FR Doc. 91–8629 Filed 4–11–91; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8343]

RIN 1545-AN38

Like-Kind Exchanges; Additional Rules for Exchanges of Personal Property and for Exchanges of Multiple Properties

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to exchanges of personal property and multiple properties under section 1031 of the Internal Revenue Code. The regulations affect persons who exchange personal property or multiple properties. The regulations are necessary to provide persons who exchange these properties with the guidance necessary to comply with the law.

EFFECTIVE DATE: The final regulations are effective for exchanges occurring on or after April 11, 1991.

FOR FURTHER INFORMATION CONTACT: Debra L. Fischer, 202–377–9581 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On April 26, 1990, the **Federal Register** published a Notice of Proposed Rulemaking (55 FR 17635) under section 1031 of the Internal Revenue Code of 1986, relating to exchanges of personal property and multiple properties. Those

regulations proposed to amend §§ 1.1031(a)–1 and 1.1031(b)–1(c) of the Income Tax Regulations and to add new §§ 1.1031(a)–2 and 1.1031(f)–1.

After issuance of the proposed regulations, the Internal Revenue Service received public comments on the proposed regulations and held a public hearing on September 6, 1990. Six commentators spoke at the hearing. After fully considering the comments and the statements made at the hearing, the Service adopts the proposed regulations as revised by this Treasury decision. Descriptions of the revisions to the proposed regulations are included in the discussion of the public comments below. Proposed regulation § 1.1031(f)–1 has been renumbered § 1.1031(j)–1 in the final regulations.

Product Class Coding System

Under the proposed and final regulations, depreciable tangible personal property held for productive use in a business is exchanged for property of a "like kind" under section 1031 if the property is exchanged for property that is either of a like kind or of a like class. An exchange of properties of a like kind may qualify under section 1031 regardless of whether the properties are also of a like class. In determining whether exchanged properties are of a like kind, no inference is to be drawn from the fact that the properties are not of a like class.

Under the proposed regulations, depreciable tangible personal property held by the taxpayer for productive use in its business is of a like class to other depreciable tangible personal property to be held by the taxpayer for productive use in its business if the exchanged properties are within either the same "General Business Asset Class" or the same "Product Class." A General Business Asset Class consists of depreciable tangible personal property described in one of asset classes 00.11 through 00.28 and 00.4 of Rev. Proc. 87–56, 1987–2 C.B. 674. Under the final regulations, the term "General Business Asset Class" has been changed to "General Asset Class."

Under the proposed regulations, Product Classes consist of depreciable tangible personal property listed in a Product Code. A property's Product Code is its 5-digit product class under the product coding system of the U.S. Department of Commerce, Bureau of the Census, 1987 Census of Manufactures and Census of Mineral Industries, 1989 Reference Series: Numerical List of Manufactured and Mineral Products (Issued February 1989) (Numerical List).

Under the proposed regulations, in the case of depreciable tangible personal property that is not listed in a Product Code, or that is listed in a Product Code ending in a "9" (*i.e.*, a miscellaneous category), the determination of whether the exchanged properties are of a like class is made based on all the facts and circumstances.

Several commentators suggested that the regulations provide a different approach to determine whether property is of a like class. The two most commonly suggested approaches were (1) expanding the use of categories contained in Rev. Proc. 87–56, and (2) using the 4-digit product coding system of the Numerical List.

The final regulations adopt a 4-digit coding system for classifying depreciable tangible personal property. Specifically, the regulations adopt the 4-digit product coding system within Division D of the Standard Industrial Classification codes, set forth in Executive Office of the President, Office of Management and Budget, Standard Industrial Classification Manual (1987) (SIC Manual). Division D contains a listing of manufactured products and equipment. The SIC Manual provides the framework for the Numerical List.

Adoption of the 4-digit SIC Manual coding system approach improves the administrability and certainty of these regulations in several ways. As a practical matter, the SIC Manual is much more readily available (e.g., at many public libraries) than the alternative Numerical List. In addition, the SIC Manual is referenced by other federal regulations. With respect to section 1031 exchanges, use of the 4-digit SIC Manual coding system will likely result in fewer categories (and fewer exchange groups), thus simplifying the administration of this provision in transactions involving a number of items of depreciable tangible personal property. Furthermore, properties will more often be of a like class and thus fewer taxpayers will have to demonstrate that depreciable tangible personal properties exchanged are of a like kind. For example, under the 5-digit Numerical List, dairy equipment is in Product Code 35232 and haying machinery is in Product Code 35236. Thus, under the Numerical List these properties would not be of a like class. Under the 4-digit SIC Manual, however, dairy equipment and haying machinery are both within the same Product Class (SIC Code 3523), and are of a like class.

Under the final regulations, property that is listed in a 4-digit product class ending in a "9" (*i.e.*, a miscellaneous category) is not considered property within a Product Class. Accordingly, that property, and property that is not listed in a 4-digit product class, cannot be of a like class based on the 4-digit SIC Manual classification. Taxpayers may still demonstrate the these properties are of a like kind.

The final regulations provide that the Commissioner may, by guidance published in the Internal Revenue Bulletin, supplement the guidance provided in the final regulations relating to classification of properties. For example, the Commissioner may determine that two properties that are listed in separate product classes each ending in a "9" are of a like class, or that property that is not listed in any product class is of a like class to property that is listed in a product class.

Personal Property Held for Investment

The proposed regulations did not provide like classes for personal property that is held for investment rather than for productive use in a business. Under the proposed regulations, therefore, an exchange of personal property held for investment could qualify for nonrecognition under section 1031 only if the exchanged properties were of a like kind. Many commentators pointed out that certain types of depreciable tangible personnal property are held for investment. Examples of depreciable tangible personal property held for investment are the lamps, carpets and other furnishings in a building that is held for investment. The commentators stated that it would facilitate compliance with and administration of the regulations not to restrict taxpayers holding such property for investment to the less objective like-kind standard.

Upon further consideration, the Service has concluded that it is appropriate to extend the like-class provisions of the proposed regulations to depreciable tangible personal property held for investment, and the final regulations so provide. As under the proposed regulations, no like classes are provided for intangible personal property or for nondepreciable personal property. Exchanges of these types of properties qualify under section 1031 only if the properties are of a like kind. Nondepreciable personal property held for investment generally includes items considered to be collectibles, for example, works of art, antiques, gems, stamps, precious metals, coins, and historical objects.

Goodwill

Under the proposed regulations, neither the goodwill nor going concern value of dissimilar businesses is of a like kind. The proposed regulations also proposed treating goodwill or going concern value of similar businesses as being of a like kind only in rare and unusual circumstances.

After considering comments received on this issue, the Internal Revenue Service has concluded that the nature and character of goodwill and going concern value of a business are so inherently unique and inseparable from the business that goodwill or going concern value of one business can never be of a like kind to goodwill or going concern value of another business.

Accordingly, under the final regulations, goodwill or going concern value of a business activity are not of a like kind to goodwill or going concern value of another business activity.

Several commentators suggested that the rule would be inappropriate because section 1031(a)(2), which provides exceptions to property eligible for nonrecognition treatment under section 1031(a)(1), does not list goodwill or going concern value. The legislative history of section 1031(a)(2) demonstrates, however, that these exceptions were provided for reasons unrelated to whether the enumerated properties could be of a like kind to any other property. The fact that goodwill or going concern value is not listed in section 1031(a)(2) therefore does not establish that goodwill or going concern value can be of a like kind.

De minimis Exception

Several commentators suggested that the regulations provide an exception from the multiple property rules for items of personal property that have de minimis value. The suggestions generally were premised on the argument that the exception would eliminate small dollar exchange groups, thus simplifying the application of the regulations.

The commentators suggesting a section 1031 de minimis rule did not address the application of section 1245 to section 1031 exchanges. In cases in which a section 1031 de minimis rule typically would apply, section 1245 (a)(1) and (b)(4) would also apply. Section 1245(a)(1) generally requires the "recapture" of prior depreciation or amortization deductions as ordinary income. Although section 1245(b)(4) provides an exception from the recapture requirement for like-kind exchanges, this exception is limited; a taxpayer who transfers section 1245 property in a section 1031 exchange must recognize recapture gain to the extent of (i) any gain recognized on the exchange (determined without regard to section 1245) plus (ii) the fair market value of property acquired which is like-kind property under section 1031 but which is not section 1245 property. See § 1.1245–4(d). Thus, a de minimis rule under section 1031 generally would neither relieve taxpayers from gain recognition nor simplify the application of the regulations. Accordingly, the final regulations do not contain a de minimis exception.

Netting of Liabilities—Debt in Anticipation

Section 1.1031(b)–1(c) of the existing regulations provides that consideration received in the form of an assumption of a liability (or a transfer of property subject to a liability) is to be treated as "other property or money" for purposes of section 1031(b). Further, in determining the amount of "other property or money" for purposes of section 1031(b), consideration given in the form of an assumption of a liability (or a receipt of property subject to a liability) is offset against consideration received in the form of an assumption of a liability (or a transfer of property subject to a liability). Section 1.1031(d)–2, examples (1) and (2), provides additional rules.

The proposed regulations would have amended § 1.1031(b)–1(c) to clarify that, in determining the amount of "other property or money" for purposes of section 1031(b), consideration received by the taxpayer in the form of an assumption of a liability (or a transfer of property subject to a liability) may not be offset by consideration given by the taxpayer in the form of an assumption of a liability (or a receipt of property subject to a liability) with respect to a liability incurred by the taxpayer in anticipation of an exchange under section 1031.

Commentators demonstrated that the proposed rule could create substantial uncertainty in the tax results of exchange transactions involving liabilities on both relinquished and replacement properties. The final regulations do not include this proposed amendment.

Other Liabilities Issues

Under the proposed regulations, all liabilities of which the taxpayer is relieved are offset against all liabilities assumed by the taxpayer in the exchange, regardless of whether the liabilities are recourse or nonrecourse and regardless of whether the liabilities are secured by or otherwise relate to specific property transferred or received as part of the exchange. If the taxpayer assumes excess liabilities as part of the exchange (*i.e.*, the amount of liabilities the taxpayer assumes exceeds the amount of the liabilities of which the taxpayer is relieved), the excess is allocated to the properties received in all the exchange groups, based on their fair market values and to the extent of their fair market values.

Several commentators suggested that these proposed rules not be adopted. In general, those commentators suggested that excess liabilities be allocated instead to property, if any, securing the indebtedness. This rule could be manipulated, however, in any case in which the lender permitted substitution of, or additions to, loan security in contemplation of the exchange transaction. It would put a premium on sophisticated tax planning and would not improve the administrability of the regulations. The final regulations do not change either § 1.1031(d)–2 of the existing regulations or the proposed regulations on allocating excess liabilities.

Effective Date

The regulations contained in this Treasury decision are effective for exchanges occurring on or after April 11, 1991. For exchanges occurring prior to April 11, 1991, the Internal Revenue Service will take into account whether the properties exchanged would be of a like class under these regulations in determining whether those properties are of a like kind.

Special Analyses

It has been determined that these final rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. Although this Treasury decision was preceded by a notice of proposed rulemaking that solicited public comments, the notice was not required by 5 U.S.C. 553 because the regulations proposed in that notice and adopted by this Treasury decision are interpretative. Therefore, a final Regulatory Flexibility Analysis is not required by the Regulatory Flexibility Act (5 U.S.C. chapter 6). In accordance with section 7805(f) of the Internal Revenue Code, the Proposed regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal authors of these final regulations are Debra L. Fischer and

Arthur E. Davis III of the Office of Assistant Chief Counsel, Income Tax & Accounting. However, personnel from other offices of the Treasury Department and from the Internal Revenue Service participated in developing the regulations on matters of both substance and style.

List of Subjects 26 CFR 1.1001–1 through 1.1102–3

Banks, Banking, Holding companies, Income taxes, Radio, Reporting and Recordkeeping requirements.

Adoption of Amendments to the Regulations

For the reasons set forth in the preamble, title 26, chapter I of the Code of Federal Regulations is amended as set forth below:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The authority for part 1 continues to read in part:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.1031(a)-1 is amended by adding a new sentence at the end of paragraph (b) to read as follows:

§ 1.1031(a)–(1) Property held for productive use in trade or business or for investment.

* * * * *

(b) * * * For additional rules for exchanges of personal property, see § 1.1031 (a)–2.

* * * * *

Par. 3. Section 1.1031 (a)-2 is added to read as follows:

§ 1.1031(a)-2 Additional rules for exchanges of personal property.

(a) *Introduction.* Section 1.1031(a)–1(b) provides that the nonrecognition rules of section 1031 do not apply to an exchange of one kind or class of property for property of a different kind or class. This section contains additional rules for determining whether personal property has been exchanged for property of a like kind or like class. Personal properties of a like class are considered to be of a "like kind" for purposes of section 1031. In addition, an exchange of properties of a like kind may qualify under section 1031 regardless of whether the properties are also of a like class. In determining whether exchanged properties are of a like kind, no inference is to be drawn from the fact that the properties are not of a like class. Under paragraph (b) of this section, depreciable tangible personal properties are of a like class if they are either within the same General Asset Class (as defined in paragraph (b)(2) of this section) or within the same Product Class (as defined in paragraph (b)(3) of this section). Paragraph (c) of this section provides rules for exchanges of intangible personal property and nondepreciable personal property.

(b) *Depreciable tangible personal property*—(1) *General rule.* Depreciable tangible personal property is exchanged for property of a "like kind" under section 1031 if the property is exchanged for property of a like kind or like class. Depreciable tangible personal property is of a like class to other depreciable tangible personal property if the exchanged properties are either within the same General Asset Class or within the same Product Class. A single property may not be classified within more than one General Asset Class or within more than one Product Class. In addition, property classified within any General Asset Class may not be classified within a Product Class. A property's General Asset Class or Product Class is determined as of the date of the exchange.

(2) *General Asset Classes.* Except as provided in paragraphs (b)(4) and (b)(5) of this section, property within a General Asset Class consists of depreciable tangible personal property described in one of asset classes 00.11 through 00.28 and 00.4 of Rev. Proc. 87–56, 1987–2 C.B. 674. These General Asset Classes describe types of depreciable tangible personal property that frequently are used in many businesses. The General Asset Classes are as follows:

(i) Office furniture, fixtures, and equipment (asset class 00.11),

(ii) Information systems (computers and peripheral equipment) (asset class 00.12),

(iii) Data handling equipment, except computers (asset class 00.13),

(iv) Airplanes (airframes and engines), except those used in commercial or contract carrying of passengers or freight, and all helicopters (airframes and engines) (asset class 00.21),

(v) Automobiles, taxis (asset class 00.22),

(vi) Buses (asset class 00.23),

(vii) Light general purpose trucks (asset class 00.241),

(viii) Heavy general purpose trucks (asset class 00.242),

(ix) Railroad cars and locomotives, except those owned by railroad transportation companies (asset class 00.25),

(x) Tractor units for use over-the-road (asset class 00.26),

(xi) Trailers and trailer-mounted containers (asset class 00.27),

(xii) Vessels, barges, tugs, and similar water-transportation equipment, except those used in marine construction (asset class 00.28), and

(xiii) Industrial steam and electric generation and/or distribution systems (asset class 00.4).

(3) *Product Classes.* Except as provided in paragraphs (b)(4) and (b)(5) of this section, property within a Product Class consists of depreciable tangible personal property that is listed in a 4-digit product class within Division D of the Standard Industrial Classification codes, set forth in Executive Office of the President, Office of Management and Budget, Standard Industrial Classification Manual (1987) (SIC Manual). Copies of the SIC Manual may be obtained from the National Technical Information Service, an agency of the U.S. Department of Commerce. Division D of the SIC Manual contains a listing of manufactured products and equipment. For this purpose, any 4-digit product class ending in a "9" (*i.e.*, a miscellaneous category) will not be considered a Product Class. If a property is listed in more than one product class, the property is treated as listed in any one of those product classes. A property's 4-digit product classification is referred to as the property's "SIC Code."

(4) *Modifications of Rev. Proc. 87–56 and SIC Manual.* The asset classes of Rev. Proc. 87–56 and the product classes of the SIC Manual may be updated or otherwise modified from time to time. In the event Rev. Proc. 87–56 is modified, the General Asset Classes will follow the modification, and the modification will be effective for exchanges occurring on or after the date the modification is published in the Internal Revenue Bulletin, unless otherwise provided. Similarly, in the event the SIC Manual is modified, the Product Classes will follow the modification, and the modification will be effective for exchanges occurring on or after the effective date of the modification. However, taxpayers may rely on the unmodified SIC Manual for exchanges occurring during the one-year period following the effective date of the modification. The SIC Manual generally is modified every five years, in years ending in a 2 or 7 (e.g., 1987 and 1992). The effective date of the modified SIC Manual is announced in the **Federal Register** and generally is January 1 of the year the SIC Manual is modified.

(5) *Modified classification through published guidance.* The Commissioner may, by guidance published in the Internal Revenue Bulletin, supplement the guidance provided in this section relating to classification of properties. For example, the Commissioner may

determine not to follow, in whole or in part, any modification of Rev. Proc. 87–56 or the SIC Manual. The Commissioner may also determine that two types of property that are listed in separate product classes each ending in a "9" are of a like class, or that a type of property that has a SIC Code is of a like class to a type of property that does not have a SIC Code.

(6) *No inference outside of Section 1031.* The rules provided in this section concerning the use of Rev. Proc. 87–56 and the SIC Manual are limited to exchanges under section 1031. No inference is intended with respect to the classification of property for other purposes, such as depreciation.

(7) *Examples.* The application of this paragraph (b) may be illustrated by the following examples:

Example 1. Taxpayer A transfers a personal computer (asset class 00.12) to B in exchange for a printer (asset class 00.12). With respect to A, the properties exchanged are within the same General Asset Class and therefore are of a like class.

Example 2. Taxpayer C transfers an airplane (asset class 00.21) to D in exchange for a heavy general purpose truck (asset class 00.242). The properties exchanged are not of a like class because they are within different General Asset Classes. Because each of the properties is within a General Asset Class, the properties may not be classified within a Product Class. The airplane and heavy general purpose truck are also not of a like kind. Therefore, the exchange does not qualify for nonrecognition of gain or loss under section 1031.

Example 3. Taxpayer E transfers a grader to F in exchange for a scraper. Neither property is within any of the General Asset Classes, and both properties are within the same Product Class (SIC Code 3533). With respect to E, therefore, the properties exchanged are of a like class.

Example 4. Taxpayer G transfers a personal computer (asset class 00.12), an airplane (asset class 00.21) and a sanding machine (SIC Code 3553), to H in exchange for a printer (asset class 00.12), a heavy general purpose truck (asset class 00.242) and a lathe (SIC Code 3553). The personal computer and the printer are of a like class because they are within the same General Asset Class; the sanding machine and the lathe are of a like class because neither property is within any of the General Asset Classes and they are within the same Product Class. The airplane and the heavy general purpose truck are neither within the same General Asset Class nor within the same Product Class, and are not of a like kind.

(c) *Intangible personal property and nondepreciable personal property*—(1) *General rule.* An exchange of intangible personal property of nondepreciable personal property qualifies for nonrecognition of gain or loss under section 1031 only if the exchanged properties are of a like kind. No like classes are provided for these properties. Whether intangible personal property is of a like kind to other intangible personal property generally depends on the nature or character of the rights involved (*e.g.*, a patent or a copyright) and also on the nature or character of the underlying property to which the intangible personal property relates.

(2) *Goodwill and going concern value.* The goodwill or going concern value of a business is not of a like kind to the goodwill or going concern value of another business.

(3) *Examples.* The application of this paragraph (c) may be illustrated by the following examples:

Example (1). Taxpayer K exchanges a copyright on a novel for a copyright on a different novel. The properties exchanged are of a like kind.

Example (2). Taxpayer J exchanges a copyright on a novel for a copyright on a song. The properties exchanged are not of a like kind.

(d) *Effective date.* Section 1.1031(a)–2 is effective for exchanges occurring on or after April 11, 1991.

Par. 4. Section 1.1031(j)–1 is added to read as follows:

§ 1.1031(j)–1 Exchanges of multiple properties.

(a) *Introduction*—(1) *Overview.* As a general rule, the application of section 1031 requires a property-by-property comparison for computing the gain recognized and basis of property received in a like-kind exchange. This section provides an exception to this general rule in the case of an exchange of multiple properties. An exchange is an exchange of multiple properties if, under paragraph (b)(2) of this section, more than one exchange group is created. In addition, an exchange is an exchange of multiple properties if only one exchange group is created but there is more than one property being transferred or received within that exchange group. Paragraph (b) of this section provides rules for computing the amount of gain recognized in an exchange of multiple properties qualifying for nonrecognition of gain or loss under section 1031. Paragraph (c) of this section provides rules for computing the basis of properties received in an exchange of multiple properties qualifying for nonrecognition of gain or loss under section 1031.

(2) *General Approach.* (i) In general, the amount of gain recognized in an exchange of multiple properties is computed by first separating the properties transferred and the properties received by the taxpayer in the exchange into exchange groups in the manner described in paragraph (b)(2) of this section. The separation of the properties transferred and the properties received in the exchange into exchange groups involves matching up properties of a like kind of like class to the extent possible. Next, all liabilities assumed by the taxpayer as part of the transaction are offset by all liabilities of which the taxpayer is relieved as part of the transaction, with the excess liabilities assumed or relieved allocated in accordance with paragraph (b)(2)(ii) of this section. Then, the rules of section 1031 and the regulations thereunder are applied separately to each exchange group to determine the amount of gain recognized in the exchange. See §§ 1.1031(b)–1 and 1.1031(c)–1. Finally, the rules of section 1031 and the regulations thereunder are applied separately to each exchange group to determine the basis of the properties received in the exchange. See §§ 1.1031(d)–1 and 1.1031(d)–2.

(ii) For purposes of this section, the exchanges are assumed to be made at arms' length, so that the aggregate fair market value of the property received in the exchange equals the aggregate fair market value of the property transferred. Thus, the amount realized with respect to the properties transferred in each exchange group is assumed to equal their aggregate fair market value.

(b) *Computation of gain recognized*—(1) *In general.* In computing the amount of gain recognized in an exchange of multiple properties, the fair market value must be determined for each property transferred and for each property received by the taxpayer in the exchange. In addition, the adjusted basis must be determined for each property transferred by the taxpayer in the exchange.

(2) *Exchange groups and residual group.* The properties transferred and the properties received by the taxpayer in the exchange are separated into exchange groups and a residual group to the extent provided in this paragraph (b)(2).

(i) *Exchange groups.* Each exchange group consists of the properties transferred and received in the exchange, all of which are of a like kind or like class. If a property could be included in more than one exchange group, the taxpayer may include the property in any of those exchange groups. Property eligible for inclusion within an exchange group does not include money or property described in section 1031(a)(2) (*i.e.*, stock in trade or other property held primarily for sale, stocks, bonds, notes, other securities or evidences of indebtedness or interest.

interests in a partnership, certificates of trust or beneficial interests, or choses in action). For example, an exchange group may consist of all exchanged properties that are within the same General Asset Class or within the same Product Class (as defined in § 1.1031(a)–2(b)). Each exchange group must consist of at least one property transferred and at least one property received in the exchange.

(ii) *Treatment of liabilities.* (A) All liabilities assumed by the taxpayer as part of the exchange are offset against all liabilities of which the taxpayer is relieved as part of the exchange, regardless of whether the liabilities are recourse or nonrecourse and regardless of whether the liabilities are secured by or otherwise relate to specific property transferred or received as part of the exchange. See §§ 1.1031 (b)–1(c) and 1.1031(d)–2. For purposes of this section, liabilities assumed by the taxpayer as part of the exchange consist of liabilities of the other party to the exchange assumed by the taxpayer and liabilities subject to which the other party's property is transferred in the exchange. Similarly, liabilities of which the taxpayer is relieved as part of the exchange consist of liabilities of the taxpayer assumed by the other party to the exchange and liabilities subject to which the taxpayer's property is transferred.

(B) If there are excess liabilities assumed by the taxpayer as part of the exchange (*i.e.*, the amount of liabilities assumed by the taxpayer exceeds the amount of liabilities of which the taxpayer is relieved), the excess is allocated among the exchange groups (but not to the residual group) in proportion to the aggregate fair market value of the properties received by the taxpayer in the exchange groups. The amount of excess liabilities assumed by the taxpayer that are allocated to each exchange group may not exceed the aggregate fair market value of the properties received in the exchange group.

(C) If there are excess liabilities of which the taxpayer is relieved as part of the exchange (*i.e.*, the amount of liabilities of which the taxpayer is relieved exceeds the amount of liabilities assumed by the taxpayer), the excess is treated as a Class I asset for purposes of making allocations to the residual group under paragraph (b)(2)(iii) of this section.

(D) Paragraphs (b)(2)(ii) (A), (B), and (C) of this section are applied in the same manner even if section 1031 and this section apply to only a portion of a larger transaction (such as a transaction described in section 1060(c) and § 1.1060–1T(b)). In that event, the amount of excess liabilities assumed by the taxpayer or the amount of excess liabilities of which the taxpayer is relieved is determined based on all liabilities assumed by the taxpayer and all liabilities of which the taxpayer is relieve as part of the larger transaction.

(iii) *Residual group.* If the aggregate fair market value of the properties transferred in all of the exchange groups differs from the aggregate fair market value of the properties received in all of the exchange groups (taking liabilities into account in the manner described in paragraph (b)(2)(ii) of this section), a residual group is created. The residual group consists of an amount of money or other property having an aggregate fair market value equal to that difference. The residual group consists of either money or other property transferred in the exchange or money or other property received in the exchange, but not both. For this purpose, other property includes property described in section 1031(a)(2) (*i.e.*, stock in trade or other property held primarily for sale, stocks, bonds, notes, other securities or evidences of indebtedness or interest, interests in a partnership, certificates of trust or beneficial interests, or choses in action), property transferred that is not of a like kind or like class with any property received, and property received that is not of a like kind or like class with any property transferred. The money and properties that are allocated to the residual group are considered to come from the following assets in the following order: first from Class I assets, then from Class II assets, then from Class III assets, and then from Class IV assets. The terms Class I assets, Class II assets, Class III assets, and Class IV assets have the same meanings as in § 1.1060–1T(d). Within each Class, taxpayers may choose which properties are allocated to the residual group.

(iv) *Exchange group surplus and deficiency.* For each of the exchange groups described in this section, an "exchange group surplus" or "exchange group deficiency," if any, must be determined. An exchange group surplus is the excess of the aggregate fair market value of the properties received (less the amount of any excess liabilities assumed by the taxpayer that are allocated to that exchange group), in an exchange group over the aggregate fair market value of the properties transferred in that exchange group. An exchange group deficiency is the excess of the aggregate fair market value of the properties transferred in an exchange group over the aggregate fair market value of the properties received (less the amount of any excess liabilities assumed by the taxpayer that are allocated to that exchange group) in that exchange group.

(3) *Amount of gain recognized.*—(i) For purposes of this section, the amount of gain or loss realized with respect to each exchange group and the residual group is the difference between the aggregate fair market value of the properties transferred in that exchange group or residual group and the properties' aggregate adjusted basis. The gain realized with respect to each exchange group is recognized to the extent of the lesser of the gain realized and the amount of the exchange group deficiency, if any. Losses realized with respect to an exchange group are not recognized. See section 1031 (a) and (c). The total amount of gain recognized under section 1031 in the exchange is the sum of the amount of gain recognized with respect to each exchange group. With respect to the residual group, the gain or loss realized (as determined under this section) is recognized as provided in section 1001 or other applicable provision of the Code.

(ii) The amount of gain or loss realized and recognized with respect to properties transferred by the taxpayer that are not within any exchange group or the residual group is determined under section 1001 and other applicable provisions of the Code, with proper adjustments made for all liabilities not allocated to the exchange groups or the residual group.

(c) *Computation of basis of properties received.* In an exchange of multiple properties qualifying for nonrecognition of gain or loss under section 1031 and this section, the aggregate basis of properties received in each of the exchange groups is the aggregate adjusted basis of the properties transferred by the taxpayer within that exchange group, increased by the amount of gain recognized by the taxpayer with respect to that exchange group, increased by the amount of the exchange group surplus or decreased by the amount of the exchange group deficiency, and increased by the amount, if any, of excess liabilities assumed by the taxpayer that are allocated to that exchange group. The resulting aggregate basis of each exchange group is allocated proportionately to each property received in the exchange group in accordance with its fair market value. The basis of each property received within the residual group (other than money) is equal to its fair market value.

(d) *Examples.* The application of this section may be illustrated by the following examples

Example 1. (i) K exchanges computer A (asset class 00.12) and automobile A (asset class 00.22), both of which were held by K for productive use in its business, with W for printer B (asset class 00.12) and automobile B (asset class 00.22), both of which will be held by K for productive use in its business. K's adjusted basis and the fair market value of the exchanged properties are as follows:

	Adjusted basis	Fair market value
Computer A	$375	$1,000
Automobile A	1,500	4,000
Printer B		2,050
Automobile B		2,950

(ii) Under paragraph (b)(2) of this section, the properties exchanged are separated into exchange groups as follows:

(A) The first exchange group consists of computer A and printer B (both are within the same General Asset Class) and, as to K, has an exchange group surplus of $1050 because the fair market value of printer B ($2050) exceeds the fair market value of computer A ($1000) by that amount.

(B) The second exchange group consists of automobile A and automobile B (both are within the same General Asset Class) and, as to K, has an exchange group deficiency of $1050 because the fair market value of automobile A ($4000) exceeds the fair market value of automobile B ($2950) by that amount.

(iii) K recognizes gain on the exchange as follows:

(A) With respect to the first exchange group, the amount of gain realized is the excess of the fair market value of computer A ($1000) over its adjusted basis ($375), or $625. The amount of gain recognized is the lesser of the gain realized ($625) and the exchange group deficiency ($0), or $0.

(B) With respect to the second exchange group, the amount of gain realized is the excess of the fair market value of automobile A ($4000) over its adjusted basis ($1500), or $2500. The amount of gain recognized is the lesser of the gain realized ($2500) and the exchange group deficiency ($1050), or $1050.

(iv) The total amount of gain recognized by K in the exchange is the sum of the gains recognized with respect to both exchange groups ($0 + $1050), or $1050.

(v) The bases of the property received by K in the exchange, printer B and automobile B, are determined in the following manner:

(A) The basis of the property received in the first exchange group is the adjusted basis of the property transferred within the exchange group ($375), increased by the amount of gain recognized with respect to that exchange group ($0), increased by the amount of the exchange group surplus ($1050), and increased by the amount of excess liabilities assumed allocated to that exchange group ($0), or $1425. Because printer B was the only property received within the first exchange group, the entire basis of $1425 is allocated to printer B.

(B) The basis of the property received in the second exchange group is the adjusted basis of the property transferred within that exchange group ($1500), increased by the amount of gain recognized with respect to that exchange group ($1050), decreased by the amount of the exchange group deficiency ($1050), and increased by the amount of excess liabilities assumed allocated to that exchange group ($0), or $1500. Because automobile B was the only property received within the second exchange group, the entire basis of $1500 is allocated to automobile B.

Example 2. (i) F exchanges computer A (asset class 00.12) and automobile A (asset class 00.22), both of which were held by F for productive use in its business, with G for printer B (asset class 00.12) and automobile B (asset class 00.22), both of which will be held by F for productive use in its business, and corporate stock and $500 cash. The adjusted basis and fair market value of the properties are as follows:

	Adjusted basis	Fair market value
Computer A	$375	$1,000
Automobile A	3,500	4,000
Printer B		800
Automobile B		2,950
Corporate stock		750
Cash		500

(ii) Under paragraph (b)(2) of this section, the properties exchanged are separated into exchange groups as follows:

(A) The first exchange group consists of computer A and printer B (both are within the same General Asset Class) and, as to F, has an exchange group deficiency of $200 because the fair market value of computer A ($1000) exceeds the fair market value of printer B ($800) by that amount.

(B) The second exchange group consists of automobile A and automobile B (both are within the same General Asset Class) and, as to F, has an exchange group deficiency of $1050 because the fair market value of automobile A ($4000) exceeds the fair market value of automobile B ($2950) by that amount.

(C) Because the aggregate fair market value of the properties transferred by F in the exchange groups ($5,000) exceeds the aggregate fair market value of the properties received by F in the exchange groups ($3750) by $1250, there is a residual group in that amount consisting of the $500 cash and the $750 worth of corporate stock.

(iii) F recognizes gain on the exchange as follows:

(A) With respect to the first exchange group, the amount of gain realized is the excess of the fair market value of computer A ($1000) over its adjusted basis ($375), or $625. The amount of gain recognized is the lesser of the gain realized ($625) and the exchange group deficiency ($200), or $200.

(B) With respect to the second exchange group, the amount of gain realized is the excess of the fair market value of automobile A ($4000) over its adjusted basis ($3500), or $500. The amount of gain recognized is the lesser of the gain realized ($500) and the exchange group deficiency ($1050), or $500.

(C) No property transferred by F was allocated to the residual group. Therefore, F does not recognize gain or loss with respect to the residual group.

(iv) The total amount of gain recognized by F in the exchange is the sum of the gains recognized with respect to both exchange groups ($200 + $500), or $700.

(v) The bases of the properties received by F in the exchange (printer B, automobile B, and the corporate stock) are determined in the following manner:

(A) The basis of the property received in the first exchange group is the adjusted basis of the property transferred within that exchange group ($375), increased by the amount of gain recognized with respect to that exchange group ($200), decreased by the amount of the exchange group deficiency ($200), and increased by the amount of excess liabilities assumed allocated to that exchange group ($0), or $375. Because printer B was the only property received within the first exchange group, the entire basis of $375 is allocated to printer B.

(B) The basis of the property received in the second exchange group is the adjusted basis of the property transferred within that exchange group ($3500), increased by the amount of gain recognized with respect to that exchange group ($500), decreased by the amount of the exchange group deficiency ($1050), and increased by the amount of excess liabilites assumed allocated to that exchange group ($0), or $2950. Because automobile B was the only property received within the second exchange group, the entire basis of $2950 is allocated to automobile B.

(C) The basis of the property received within the residual group (the corporate stock) is equal to its fair market value or $750. Cash of $500 is also received within the residual group.

Example 3. (i) J and H enter into an exchange of the following properties. All of the property (except for the inventory) transferred by J was held for productive use in J's business. All of the property received by J will be held by J for productive use in its business.

J Transfers:			*H Transfers:*	
Property	Adjusted basis	Fair market value	Property	Fair market value
Computer A	$1,500	$5,000	Computer Z	$4,500
Computer B	500	3,000	Printer Y	2,500
Printer C	2,000	1,500	Real Estate X	1,000
Real Estate D	1,200	2,000	Real Estate W	4,000

J Transfers:			H Transfers:	
Property	Adjusted basis	Fair market value	Property	Fair market value
Real Estate E	0	1,800	Grader V	2,000
Scraper F	3,300	2,500	Truck T	1,700
Inventory	1,000	1,700	Cash	1,800
Total	9,500	17,500		17,500

(ii) Under paragraph (b)(2) of this section, the properties exchanged are separated into exchange groups as follows:

(A) The first exchange group consists of computer A, computer B, printer C, computer Z, and printer Y (all are within the same General Asset Class) and, as to J, has an exchange group deficiency of $2500 (($5000 + $3000 + $1500) − ($4500 + $2500)).

(B) The second exchange group consists of real estate D, E, X and W (all are of a like kind) and, as to J, has an exchange group surplus of $1200 (($1000 + $4000) − ($2000 + $1800)).

(C) The third exchange group consists of scraper F and grader V (both are within the same Product Class (SIC Code 3531)) and, as to J, has an exchange group deficiency of $500 ($2500 − $2000).

(D) Because the aggregate fair market value of the properties transferred by J in the exchange groups ($15,800) exceeds the aggregate fair market value of the properties received by J in the exchange groups ($14,000) by $1800, there is a residual group in that amount consisting of the $1800 cash (a Class I asset).

(E) The transaction also includes a taxable exchange of inventory (which is property described in section 1031 (a)[2]) for truck T (which is not of a like kind or like class to any property transferred in the exchange).

(iii) J recognizes gain on the transaction as follows:

(A) With respect to the first exchange group, the amount of gain realized is the excess of the aggregate fair market value of the properties transferred in the exchange group ($9500) over the aggregate adjusted basis ($4000), or $5500. The amount of gain recognized is the lesser of the gain realized ($5500) and the exchange group deficiency ($2500), or $2500.

(B) With respect to the second exchange group, the amount of gain realized is the excess of the aggregate fair market value of the properties transferred in the exchange group ($3800) over the aggregate adjusted basis ($1200), or $2600. The amount of gain recognized is the lesser of the gain realized ($2600) and the exchange group deficiency ($0), or $0.

(C) With respect to the third exchange group, a loss is realized in the amount of $800 because the fair market value of the property transferred in the exchange group ($2500) is less than its adjusted basis ($3300). Although a loss of $800 was realized, under section 1031 (a) and (c) losses are not recognized.

(D) No property transferred by J was allocated to the residual group. Therefore, J does not recognize gain or loss with respect to the residual group.

(E) With respect to the taxable exchange of inventory for truck T, gain of $700 is realized and recognized by J (amount realized of $1700 (the fair market value of truck T) less the adjusted basis of the inventory ($1000)).

(iv) The total amount of gain recognized by J in the transaction is the sum of the gains recognized under section 1031 with respect to each exchange group ($2500 + $0 + $0) and any gain recognized outside of section 1031 ($700), or $3200.

(v) The bases of the property received by J in the exchange are determined in the following manner:

(A) The aggregate basis of the properties received in the first exchange group is the adjusted basis of the properties transferred within that exchange group ($4000), increased by the amount of gain recognized with respect to that exchange group ($2500), decreased by the amount of the exchange group deficiency ($2500), and increased by the amount of excess liabilities assumed allocated to that exchange group ($0), or $4000. This $4000 of basis is allocated proportionately among the assets received within the first exchange group in accordance with their fair market values: Computer Z's basis is $2571 ($4000 × $4500/$7000); printer Y's basis is $1429 ($4000 × $2500/$7000).

(B) The aggregate basis of the properties received in the second exchange group is the adjusted basis of the properties transferred within that exchange group ($1200), increased by the amount of gain recognized with respect to that exchange group ($0), increased by the amount of the exchange group surplus ($1200), and increased by the amount of excess liabilities assumed allocated to that exchange group ($0), or $2400. This $2400 of basis is allocated proportionately among the assets received within the second exchange group in accordance with their fair market values: Real estate X's basis is $480 ($2400 × $1000/$5000); real estate W's basis is $1920 ($2400 × $4000/$5000).

(c) The basis of the property received in the third exchange group is the adjusted basis of the property transferred within that exchange group ($3300), increased by the amount of gain recognized with respect to that exchange group ($0), decreased by the amount of the exchange group deficiency ($500), and increased by the amount of excess liabilities assumed allocated to that exchange group ($0), or $2800. Because grader V was the only property received within the third exchange group, the entire basis of $2800 is allocated to grader V.

(D) Cash of $1800 is received within the residual group.

(E) The basis of the property received in the taxable exchange (truck T) is equal to its cost of $1700.

Example 4. (i) B exchanges computer A (asset class 00.12), automobile A (asset class 00.22) and truck A (asset class 00.241), with C for computer R (asset class 00.12), automobile R (asset class 00.22), truck R (asset class 00.241) and $400 cash. All properties transferred by either B or C were held for productive use in the respective transferor's business. Similarly, all properties to be received by either B or C will be held for productive use in the respective recipient's business. Automobile A, automobile R and truck R are each secured by a nonrecourse liability and are transferred subject to such liability. The adjusted basis, fair market value, and liability secured by each property, if any, are as follows:

	Adjusted basis	Fair market value	Liability
B transfers:			
Computer A	$800	$1,500	$0
Automobile A	900	2,500	500
Truck A	700	2,000	0
C transfers:			
Computer R	1,100	1,600	0
Automobile R	2,100	3,100	750
Truck R	600	1,400	250
Cash		400	

(ii) The tax treatment to B is as follows:

(A)(*1*) The first exchange group consists of computers A and R (both are within the same General Asset Class).

(*2*) The second exchange group consists of automobiles A and R (both are within the same General Asset Class).

(*3*) The third exchange group consists of trucks A and R (both are in the same General Asset Class).

(B) Under paragraph (b)(2)(ii) of this section, all liabilities assumed by B ($1000) are offset by all liabilities of which B is relieved ($500), resulting in excess liabilities assumed of $500. The excess liabilities assumed of $500 is allocated among the exchange groups in proportion to the fair market value of the properties received by B in the exchange groups as follows:

(*1*) $131 of excess liabilities assumed ($500 × $1600/$6100) is allocated to the first exchange group. The first exchange group has an exchange group deficiency of $31 because the fair market value of computer A ($1500) exceeds the fair market value of computer R less the excess liabilities assumed allocated to the exchange group ($1600–$131) by that amount.

(*2*) $254 of excess liabilities assumed ($500 × $3100/$6100) is allocated to the second exchange group. The second exchange group has an exchange group surplus of $346 because the fair market value of automobile

R less the excess liabilities assumed allocated to the exchange group ($3100–$254) exceeds the fair market value of automobile A ($2500) by that amount.

(3) $115 of excess liabilities assumed ($500 × $1400/$6100) is allocated to the third exchange group. The third exchange group has an exchange group deficiency of $715 because the fair market value of truck A ($2000) exceeds the fair market value of truck R less the excess liabilities assumed allocated to the exchange group ($1400–$115) by that amount.

(4) The difference between the aggregate fair market value of the properties transferred in all of the exchange groups, $6000, and the aggregate fair market value of the properties received in all of the exchange groups (taking excess liabilities assumed into account), $5600, is $400. Therefore there is a residual group in that amount consisting of $400 cash received.

(C) B recognizes gain on the exchange as follows:

(1) With respect to the first exchange group, the amount of gain realized is the excess of the fair market value of computer A ($1500) over its adjusted basis ($800), or $700. The amount of gain recognized is the lesser of the gain realized ($700) and the exchange group deficiency ($31), or $31.

(2) With respect to the second exchange group, the amount of gain realized is the excess of the fair market value of automobile A ($2500) over its adjusted basis ($900), or $1600.

The amount of gain recognized is the lesser of the gain realized ($1600) and the exchange group deficiency ($0), or $0.

(3) With respect to the third exchange group, the amount of gain realized is the excess of the fair market value of truck A ($2000) over its adjusted basis ($700), or $1300. The amount of gain recognized is the lesser of gain realized ($1300) and the exchange group deficiency ($715), or $715.

(4) No property transferred by B was allocated to the residual group. Therefore, B does not recognize gain or loss with respect to the residual group.

(D) The total amount of gain recognized by B in the exchange is the sum of the gains recognized under section 1031 with respect to each exchange group ($31 + $0 +$715), or $746.

(E) the bases of the property received by B in the exchange (computer R, automobile R, and truck R) are determined in the following manner:

(1) The basis of the property received in the first exchange group is the adjusted basis of the property transferred within that exchange group ($800), increased by the amount of gain recognized with respect to that exchange group ($31), decreased by the amount of the exchange group deficiency ($31), and increased by the amount of excess liabilities assumed allocated to that exchange group ($131), or $931. Because computer R was the only property received within the first exchange group, the entire basis of $931 is allocated to computer R.

(2) The basis of the property received in the second exchange group is the adjusted basis of the property transferred within that exchange group ($900), increased by the amount of gain recognized with respect to that exchange group ($0), increased by the amount of the exchange group surplus ($346), and increased by the amount of excess liabilities assumed allocated to that exchange group ($254), or $1500. Because automobile R was the only property received within the second exchange group, the entire basis of $1500 is allocated to automobile R.

(3) The basis of the property received in the third exchange group is the adjusted basis of the property transferred within that exchange group ($700), increased by the amount of gain recognized with respect to that exchange group ($715), decreased by the amount of the exchange group deficiency ($715), and increased by the amount of excess liabilities assumed allocated to that exchange group ($115), or $815. Because truck R was the only property received within the third exchange group, the entire basis of $815 is allocated to truck R.

(F) Cash of $400 is also received by B.

(iii) The tax treatment to C is as follows:

(A) (1) The first exchange group consists of computers R and A (both are within the same General Asset Class).

(2) The second exchange group consists of automobiles R and A (both are within the same General Asset Class).

(3) The third exchange group consists of trucks R and A (both are in the same General Asset Class).

(B) Under paragraph (b)(2)(ii) of this section, all liabilities of which C is relieved ($1000) are offset by all liabilities assumed by C ($500), resulting in excess liabilities relieved of $500. This excess liabilities relieved is treated as cash received by C.

(1) The first exchange group has an exchange group deficiency of $100 because the fair market value of computer R ($1600) exceeds the fair market value of computer A ($1500) by that amount.

(2) The second exchange group has an exchange group deficiency of $600 because the fair market value of automobile R ($3100) exceeds the fair market value of automobile A ($2500) by that amount.

(3) The third exchange group has an exchange group surplus of $600 because the fair market value of truck A ($2000) exceeds the fair market value of truck R ($1400) by that amount.

(4) The difference between the aggregate fair market value of the properties transferred by C in all of the exchange groups, $6100, and the aggregate fair market value of the properties received by C in all of the exchange groups, $6000, is $100. Therefore, there is a residual group in that amount, consisting of excess liabilities relieved of $100, which is treated as cash received by C.

(5) The $400 cash paid by C and $400 of the excess liabilities relieved which is treated as cash received by C are not within the exchange groups of the residual group.

(C) C recognizes gain on the exchange as follows:

(1) With respect to the first exchange group, the amount of gain realized is the excess of the fair market value of computer R ($1600) over its adjusted basis ($1100), or $500. The amount of gain recognized is the lesser of the gain realized ($500) and the exchange group deficiency ($100), or $100.

(2) With respect to the second exchange group, the amount of gain realized is the excess of the fair market value of automobile R ($3100) over its adjusted basis ($2100), or $1000. The amount of gain recognized is the lesser of the gain realized ($1000) and the exchange group deficiency ($600), or $600.

(3) With respect to the third exchange group, the amount of gain realized is the excess of the fair market value of truck R ($1400) over its adjusted basis ($600), or $800. The amount of gain recognized is the lesser of gain realized ($800) and the exchange group deficiency ($0), or $0.

(4) No property transferred by C was allocated to the residual group. Therefore, C does not recognize any gain with respect to the residual group.

(D) The total amount of gain recognized by C in the exchange is the sum of the gains recognized under section 1031 with respect to each exchange group ($100+$600+$0), or $700.

(E) The bases of the properties received by C in the exchange (computer A, automobile A, and truck A) are determined in the following manner:

(1) The basis of the property received in the first exchange group is the adjusted basis of the property transferred within that exchange group ($1100), increased by the amount of gain recognized with respect to that exchange group ($100), decreased by the amount of the exchange group deficiency ($100), and increased by the amount of excess liabilities assumed allocated to that exchange group ($0), or $1100. Because computer A was the only property received within the first exchange group, the entire basis of $1100 is allocated to computer A.

(2) The basis of the property received in the second exchange group is the adjusted basis of the property transferred within that exchange group ($2100), increased by the amount of gain recognized with respect to that exchange group ($600), decreased by the amount of the exchange group deficiency ($600), and increased by the amount of excess liabilities assumed allocated to that exchange group ($0), or $2100. Because automobile A was the only property received within the second exchange group, the entire basis of $2100 is allocated to automobile A.

(3) The basis of the property received in the third exchange group is the adjusted basis of the property transferred within that exchange group ($600), increased by the amount of gain recognized with respect to that exchange group ($0), increased by the amount of the exchange group surplus ($600), and increased by the amount of excess liabilities assumed allocated to that exchange group ($0), or $1200. Because truck A was the only property received within the third exchange group, the entire basis of $1200 is allocated to truck A.

Example 5. (i) U exchanges real estate A, real estate B, and grader A (SIC Code 3531) with V for real estate R and railroad car R (General Asset Class 00.25). All properties transferred by either U or V were held for productive use in the respective transferor's business. Similarly, all properties to be received by either U or V will be held for productive use in the respective recipient's business. Real estate R is secured by a

recourse liability and is transferred subject to that liability. The adjusted basis, fair market value, and liability secured by each property, if any, are as follows:

	Adjusted basis	Fair market value	Liability
U Transfers:			
Real Estate A	$2000	$5000	
Real Estate B	8000	13,500	
Grader A	500	2000	
V Transfers:			
Real Estate R	$20,000	$26,500	$7000
Railroad car R	1200	1000	

(ii) The tax treatment to U is as follows:

(A) The exchange group consists of real estate A, real estate B, and real estate R.

(B) Under paragraph (b)(2)(ii) of this section, all liabilities assumed by U ($7000) are excess liabilities assumed. The excess liabilities assumed of $7000 is allocated to the exchange group.

(*1*) The exchange group has an exchange group surplus of $1000 because the fair market value of real estate R less the excess liabilities assumed allocated to the exchange group ($26,500–$7000) exceeds the aggregate fair market value of real estate A and B ($18,500) by that amount.

(*2*) The difference between the aggregate fair market value of the properties received in the exchange group (taking excess liabilities assumed into account), $19,500, and the aggregate fair market value of the properties transferred in the exchange group, $18,500, is $1000. Therefore, there is a residual group in that amount consisting of $1000 (or 50 percent of the fair market value) of grader A.

(*3*) The transaction also includes a taxable exchange of the 50 percent portion of grader A not allocated to the residual group (which is not of a like kind or like class to any property received by U in the exchange) for railroad car R (which is not of a like kind or like class to any property transferred by U in the exchange).

(C) U recognizes gain on the exchange as follows:

(*1*) With respect to the exchange group, the amount of the gain realized is the excess of the aggregate fair market value of real estate A and B ($18,500) over the aggregate adjusted basis ($10,000), or $8500. The amount of the gain recognized is the lesser of the gain realized ($8500) and the exchange group deficiency ($0), or $0.

(*2*) With respect to the residual group, the amount of gain realized and recognized is the excess of the fair market value of the 50 percent portion of grader A that is allocated to the residual group ($1000) over its adjusted basis ($250), or $750.

(*3*) With respect to the taxable exchange of the 50 percent portion of grader A not allocated to the residual group for railroad car R, gain of $750 is realized and recognized by U (amount realized of $1000 (the fair market value of railroad car R) less the adjusted basis of the 50 percent portion of grader A not allocated to the residual group ($250)).

(D) The total amount of gain recognized by U in the transaction is the sum of the gain recognized under section 1031 with respect to the exchange group ($0), any gain recognized with respect to the residual group ($750), and any gain recognized with respect to property transferred that is not in the exchange group or the residual group ($750), or $1500.

(E) The bases of the property received by U in the exchange (real estate R and railroad car R) are determined in the following manner:

(*1*) The basis of the property received in the exchange group is the aggregate adjusted basis of the property transferred within that exchange group ($10,000), increased by the amount of gain recognized with respect to that exchange group ($0), increased by the amount of the exchange group surplus ($1000), and increased by the amount of excess liabilities assumed allocated to that exchange group ($7000), or $18,000. Because real estate R is the only property received within the exchange group, the entire basis of $18,000 is allocated to real estate R.

(*2*) The basis of railroad car R is equal to its cost of $1000.

(iii) The tax treatment to V is as follows:

(A) The exchange group consists of real estate R, real estate A, and real estate B.

(B) Under paragraph (b)(2)(ii) of this section, the liabilities of which V is relieved ($7000) results in excess liabilities relieved of $7000 and is treated as cash received by V.

(*1*) The exchange group has an exchange group deficiency of $8000 because the fair market value of real estate R ($26,500) exceeds the aggregate fair market value of real estate A and B ($18,500) by that amount.

(*2*) The difference between the aggregate fair market value of the properties transferred by V in the exchange group, $26,500, and the aggregate fair market value of the properties received by V in the exchange group, $18,500, is $8000. Therefore, there is a residual group in that amount, consisting of the excess liabilities relieved of $7000, which is treated as cash received by V, and $1000 (or 50 percent of the fair market value) of grader A.

(*3*) The transaction also includes a taxable exchange of railroad car R (which is not of a like kind or like class to any property received by V in the exchange) for the 50 percent portion of grader A (which is not of a like kind or like class to any property transferred by V in the exchange) not allocated to the residual group.

(C) V recognizes gain on the exchange as follows:

(*1*) With respect to the exchange group, the amount of the gain realized is the excess of the fair market value of real estate R ($26,500) over its adjusted basis ($20,000), or $6500. The amount of the gain recognized is the lesser of the gain realized ($6500) and the exchange group deficiency ($8000), or $6500.

(*2*) No property transferred by V was allocated to the residual group. Therefore, V does not recognize gain or loss with respect to the residual group.

(*3*) With respect to the taxable exchange of railroad car R for the 50 percent portion of grader A not allocated to the exchange group or the residual group, a loss is realized and recognized in the amount of $200 (the excess of the $1200 adjusted basis of railroad car R over the amount realized of $1000 (fair market value of the 50 percent portion of grader A)).

(D) The basis of the property received by V in the exchange (real estate A, real estate B, and grader A) are determined in the following manner:

(*1*) The basis of the property received in the exchange group is the adjusted basis of the property transferred within that exchange group ($20,000), increased by the amount of gain recognized with respect to that exchange group ($6500), and decreased by the amount of the exchange group deficiency ($8000), or $18,500. This $18,500 of basis is allocated proportionately among the assets received within the exchange group in accordance with their fair market values: real estate A's basis is $5000 ($18,500 × $5000/$18,500); real estate B's basis is $13,500 ($18,500 × $13,500/$18,500).

(*2*) The basis of grader A is $2000.

(e) *Effective date.* Section 1.1031 (j)–1 is effective for exchanges occurring on or after April 11, 1991.

Fred T. Goldberg,

Commissioner of Internal Revenue.

Approved: March 12, 1991.

Kenneth W. Gideon

Assistant Secretary of the Treasury.

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DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

29 CFR Part 2570

Prohibited Transaction Exemption Procedures; Employee Benefit Plans

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Final regulation; technical correction.

SUMMARY: This document contains a non-substantive correction by the Department of Labor in the final regulation that describes the procedures for filing and processing applications for prohibited transaction exemptions which appeared in the Federal Register on August 10, 1990 (55 FR 32836).

FOR FURTHER INFORMATION CONTACT: Susan E. Rees, Plan Benefits Security Division, Office of the Solicitor, U.S. Department of Labor, Washington, DC 20210, (202) 523–9141.

SUPPLEMENTARY INFORMATION: On Friday, August 10, 1990, the Department of Labor issued a final regulation which describes the procedures for filing and processing applications for exemptions from the prohibited transaction